

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:15-cr-10271-WGY

4
5 UNITED STATES OF AMERICA

6
7 vs.

8
9 ALEX LEVIN

10
11 *****

12
13 For Hearing Before:
14 Judge William G. Young

15 Final Pretrial Conference

16
17 United States District Court
18 District of Massachusetts (Boston.)
19 One Courthouse Way
20 Boston, Massachusetts 02210
21 Tuesday, May 14, 2019

22 *****

23 REPORTER: RICHARD H. ROMANOW, RPR
24 Official Court Reporter
25 United States District Court
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for the defendant

1 (Begins, 2:45 p.m.)

2 THE CLERK: Criminal Matter 15-10271, the
3 United States of America versus Alex Levin.

4 THE COURT: Good afternoon. Would counsel
5 identify themselves.

6 MS. PARUTI: Good afternoon, your Honor, Anne
7 Paruti for the government.

8 MR. CARNEY: J.W. Carney, Jr. representing
9 Mr. Levin.

10 MR. GAUDET: And Dan Gaudet also for Alex
11 Levin.

12 THE COURT: Yes.

13 MR. CARNEY: Your Honor, our client is present
14 in the court. Would you prefer he sit at counsel table?

15 THE COURT: He is welcome to sit at counsel
16 table with you, but I have no preference.

17 MR. CARNEY: Okay.

18 THE COURT: Now, um, this case is on for trial
19 to commence next Monday, the 20th. Let's, um -- I mean
20 to go over those things which we ought address at this
21 juncture.

22 And, Ms. Paruti, you, I take it, supplied the
23 information that's required by Local Rule 116?

24 MS. PARUTI: I did, your Honor.

25 THE COURT: And, um, you have a witness list

1 for the defense?

2 MS. PARUTI: I have provided the defense with
3 the names of the witnesses that I expect to call.

4 THE COURT: All right.

5 And, Mr. Carney, you have reciprocal obligations
6 which must be discharged by tomorrow and I understand
7 that you will do that.

8 MR. CARNEY: Yes, your Honor.

9 THE COURT: And if there are any stipulations
10 or motions in limine, they all should be filed by Friday
11 the 17th.

12 Let's talk about, um, because this case spans the
13 Memorial Day weekend, that presents an issue. Maybe it
14 doesn't span the Memorial Day Weekend.

15 How long will it take to try this case?

16 MS. PARUTI: The government actually, your
17 Honor, only anticipates calling two witnesses. I've
18 spoken to counsel for -- I actually had spoken to
19 Mr. Gaudet because Mr. Carney has been on trial until
20 yesterday in a different courthouse about, um --

21 THE COURT: That's a compliment to him as you
22 are well aware. But all right. Go ahead.

23 MS. PARUTI: The -- and I'm well aware of the
24 case as well, which was mine before I transferred over
25 to the U.S. Attorney's Office.

1 There is only one set of circumstances where the
2 government would have an additional witness and, um,
3 that's something that I think we should probably talk
4 more thoroughly about before we get into it with your
5 Honor, because frankly I don't think we need your
6 intervention yet. All that being said, I think that the
7 case can be tried well within the week, um, if the
8 government only needs to call those two witnesses. I
9 would think, um, three days maximum, assuming half days.

10 I don't know obviously who the defense will be
11 calling, but with two witnesses and maybe somewhere in
12 the neighborhood of 50 documentary exhibits or so, I
13 think it will move pretty swiftly.

14 THE COURT: Well I appreciate that and I'm not
15 going to hold you to it, but it's helpful. Here's the
16 Court's schedule, so you know.

17 MS. PARUTI: Sure.

18 THE COURT: I'm not going to sit on Friday.
19 I'm not going to sit on Tuesday. So the days we have --
20 Tuesday the 28th. So we'll impanel on Monday, the 20th.
21 We'll sit the 21st. We'll sit the 22nd. And we'll sit
22 the 23rd. No, strike that. No, wait a minute, I'm
23 mistaken. I'm mistaken, because I need to get a look at
24 --

25 We have three days, we have the 20th, the 21st,

1 and the 22nd, then we pick up again on the 29th and we
2 keep going. So when we pick the jury, I will tell them
3 they will have that recess.

4 We'll pick 14 jurors. The defense will have 11
5 peremptories. The government will have 7. I imagine
6 that even if it is a more extensive case, we will get it
7 done that following week, the 29th, 30th, um, if it need
8 go that long.

9 You know my practice, you know how I -- well let
10 me go over it, Ms. Paruti, I don't know as you've tried
11 a case before me.

12 We'll bring the jurors in. I will inquire of
13 them. If I don't ask any questions you've asked me to
14 ask, you may assume that I'm not going to and your
15 rights are saved. I have them raise their hands, then I
16 will bring them up one by one. Counsel will come up. I
17 will inquire of them further. I will rule, I will
18 either excuse them or not. If counsel differs with my
19 conclusion, once they have stepped away, I will briefly
20 hear you on the point, and I may reconsider, and that
21 way if I decide to keep them, they won't have left the
22 courtroom.

23 Once I have the panel indifferent, I will -- or
24 Ms. Gaudet will fill the box. Then I will inquire of
25 them. We will know their names, but I'll inquire of

1 them where they work and what they do and where their
2 spouse works and what he or she does, very briefly, so
3 you can hear them speak and hear how they respond.

4 Then we'll go to the sidebar. The government will
5 exercise its challenges. The defense will exercise --
6 without my filling the box, the defense will exercise
7 its challenges. When that's done, we will refill the
8 box, I'll ask the same question to the newcomers. The
9 second round, the defense will go first, and so on until
10 we have a complete jury. The last two jurors picked are
11 the alternates, but we will not tell them they are the
12 alternates until the end of the case. I will pick the
13 foreperson.

14 We will try it from 9:00 till 1:00 each day and,
15 um, I will be very firm on starting right at 9:00 and
16 stopping right at 1:00.

17 Let's see. I give a pretty substantive pretrial
18 charge which means I will charge the substance of the
19 offense, and I see the government has proposed jury
20 instructions, that's helpful. I may not be as detailed
21 as I will be at the end of the case, but I will attempt
22 to give the jury a good idea of what it is that the
23 government must prove beyond a reasonable doubt.

24 In my actual conduct of a trial, I think I am not
25 terribly idiosyncratic. I do not like speaking

1 objections. I try to rule promptly on objections. I --
2 and this is not an invitation, but I, more or less, will
3 let you come to the sidebar if you need to articulate
4 some grounds for taking issue with my ruling.

5 Let's see. 15 minutes for openings, half an hour
6 for closings. The order of closings is mandated by the
7 federal rules and of course I follow it.

8 Any questions? This is a good time for questions
9 about how the trial proceeds.

10 Ms. Paruti.

11 MS. PARUTI: I have one question that is more
12 substantive in nature and that is with respect to
13 proving any sentencing enhancements. I understand that
14 the Court --

15 THE COURT: You're absolutely right.

16 There are sentencing enhancements here?

17 MS. PARUTI: There are, your Honor.

18 THE COURT: And spell them out for me very
19 quickly.

20 MS. PARUTI: It's a child pornography offense,
21 so there would be enhancements related to the number of
22 images in the defendant's possession, the age of the
23 children depicted, whether or not any of the children
24 are toddlers or babies, and whether or not the offense
25 involved the use of a computer. So I believe that those

1 are four enhancements that would be at play in this
2 particular case.

3 THE COURT: And thank you very much for saying
4 that.

5 Mr. Carney, how do you want to handle that? You
6 know the Court's practice.

7 MR. CARNEY: I would prefer that the jury have
8 the substantive case and the Court bifurcate the
9 enhancement portion, which we are prepared to try jury-
10 waived before your Honor alone.

11 THE COURT: Thank you.

12 So what I hear him say, so you understand the
13 procedure, um, is only the substantive case will go to
14 the jury. If the verdict is not guilty, that ends it.
15 If the verdict is guilty, you'll have a chance to prove
16 each of these enhancements on evidence and the burden
17 will be beyond a reasonable doubt. It is a jury-waived
18 trial. At the end of that trial, I'll make my findings,
19 um, as to the enhancements. Whatever I find, that will
20 be the framework for sentencing which will follow along.

21 I don't think I need to say any more. We don't
22 have to duplicate what the jury has heard, but you need
23 not, and we're not going to, get into the details of
24 enhancements since Mr. Carney waives a jury as to those
25 enhancements and we'll try them to the court.

1 Does that answer your question?

2 MS. PARUTI: It does. Thank you.

3 THE COURT: All right.

4 Any questions, Mr. Carney?

5 MR. CARNEY: No, thank you, your Honor.

6 THE COURT: Very well. Monday morning, 9:00.
7 Have a good weekend and I look forward to seeing you
8 then. We'll recess.

9 (Ends, 3:00 p.m.)

10

11 C E R T I F I C A T E

12

13 I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do
14 hereby certify that the forgoing transcript of the
15 record is a true and accurate transcription of my
16 stenographic notes, before Judge William G. Young, on
17 Tuesday, May 14, 2019, to the best of my skill and
18 ability.

19

20

21 /s/ Richard H. Romanow 06-25-20

22

RICHARD H. ROMANOW Date

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